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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,052	12/30/2003	Brian Alan Grove	2043.036US1	9104
49845 7590 12/22/2006 SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER GARG, YOGESH C	
			ART UNIT 3625	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/22/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/750,052

Applicant(s)

GROVE ET AL.

Examiner

Yogesh C. Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-22, 51-58, 87-94 and 116-119 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-22, 51-58, 87-94 & 116-119 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group III-claims 15-22, 51-58, 87-94 and 116-119 in the reply filed on 9/22/2006 is acknowledged. The applicant has canceled claims 1-14, 23-50, 59-86, 95-115 and 120-131. Currently claims 15-22, 51-58, 87-94, and 116-119 are pending for examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 15-18, 21-22, 51-54, 57-58, 87-90, 93-94 and 116-119 are rejected under 35 U.S.C. 102(e) as being anticipated by Nishi (US PG-Pub 20020161691).

Regarding claim 15, Nishi discloses a network-based commerce system including a processor coupled to a memory through a bus (see Fig1, paragraphs 0001-0029 and 0068-0071. The computer 4 performing the center processing includes a processor coupled to a memory through a bus for storing computer programs) and an auction price-setting process executed from the memory by the processor to cause the

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processor to adjust a reserve price associated with a listing of an item during a network-based auction price-setting process (see at least paragraphs 0088 and 0156-0174.).

Regarding claims 16-18, Nishi fairly suggests any one of the adjustments that is the adjustment of the reserve price includes removing the reserve price (see paragraph 0062 and claim 5 on page 7. If the bids do not equal or exceed the reserve price the reserve price is removed/not considered and the highest bidder is designated as the bidder) or lowering or raising the reserve price (see at least paragraphs 0156-0172 which discloses modifying the reserve price based upon the status of bids received and shows an example as how the reserve price is adjusted lower to the highest bid price if none of the bids received are equal or greater than the originally fixed reserve price. Paragraph 0115 suggests that when a plurality of buyers bid higher than the reserve price the auction is continued to next cycle with the new start price, which corresponds to the new reserve price which is raised from its earlier value with the anticipation that higher bidding price can be obtained).

Regarding claim 21, Nishi further suggests that the network-based commerce system of claim 15, wherein the auction price-setting process further causes the processor to lower a proxy bid, of a buyer higher than the adjusted reserve price, to a predetermined amount below the adjusted reserve price (see at least paragraphs 0138-0145 and 0156-0174. If during an auction cycle the highest bid is less than the reserve price within a predefined range the auction process adjusts the reserve price and while

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doing so the maximum proxy bid/representation bid is also modified to , that is lowered to the highest bid plus a minimum bidding price unit.)

Regarding claim 22, Nishi suggests that the network-based commerce system of claim 15, wherein the auction price-setting process further causes the processor to automatically notify one or more bidders of the adjustment of the reserve price (see at least paragraphs 0071, paragraphs 0097, 0101 and Figs 5, 6(1) and 6(20. whenever in the network-based auction process a reserve price is adjusted at the assessor [seller] computer is also notified to the center computer system and then to buyer computer .)

Regarding claims 51-54, 87-90, 116-119, their limitations are closely parallel to the limitations of claims 15-18 and are therefore analyzed and rejected on the basis of same rationale as used for claims 15-18 above.

Regarding claims 57-58, and 93-94, their limitations are closely parallel to the limitations of claims 21-22 and are therefore analyzed and rejected on the basis of same rationale as used for claims 21-22 above

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19-20, 55-56 and 90-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishi in view of Herschkorn (US Patent 6,691,094 B1).

Regarding claims 19-20, Nishi teaches all the limitations of claim 15, as analyzed above. Rackson does disclose that the network-based commerce system of claim 15, wherein the auction price-setting process further causes the processor to automatically notify a seller of the item when a high proxy bid is within a predetermined percentage range of the adjusted reserve price or within a predetermined value range of the reserve price. Herschkorn, in the same field of endeavor of matching sellers and buyers fairly suggest and discloses this limitation (see at least col.5, line 66-col.6, line 4, col.15, lines 56-67, col.24, lines 50-63, that is claims 9-10. Herschkorn teaches that the system/processor determines if the buyer's bid [corresponds to high proxy bid as recited in the claim] does not match with the seller's offer [corresponds to the seller's reserve price as recited in the claim] but is within a predetermined threshold, such as within 1-5 points or \$100,000 both the seller and buyer are notified. In view of Herschkorn, it would be obvious to one of an ordinary skilled in the art that while conducting auctions for large valued items to modify Nishi to incorporate Herschkorn features because when the system determines that the buyer's bids does not match or exceed the seller's reserve price but they are within a predetermined proximity of the seller's reserve price either in points/percentage or value and informs about it to both the seller and buyer then there is a possibility that buyer and seller could negotiate and close the deal.

Regarding claims 55-56 and 90-91, their limitations are closely parallel to the limitations of claims 19-20 and are therefore analyzed and rejected on the basis of same rationale as used for claims 19-20 above

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rackson et al (US Patent 6,415,270B1), discloses a network-based commerce system including a processor coupled to a memory through a bus (see Figs 3 and 10 and col.9, lines 7-49, which show a processor coupled to a memory in an networked – based auction system) and an auction price-setting process executed from the memory by the processor to cause the processor to adjust a reserve price associated with a listing of an item during a network-based auction price-setting process (see at least col.11, lines 8-24 which show that the processor adjusts the reserve price when accepting a combination of bids.). Rackson fairly suggests any one of the adjustments that is the adjustment of the reserve price includes removing the reserve price or the adjustment of the reserve price includes lowering the reserve price or the adjustment of the reserve price includes raising the reserve price (see at least col.11, lines 8-24. IN the situation when the processor detects a combination of bids it does not consider the established reserve price and accepts bids both higher and lower than the reserve price

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such that the higher and lower bids in combination exceeds the minimum average bid price, that is the reserve price).

Dabney et al.(US Pub : 2004/0128224 A1) discloses a network- based auction process wherein the auction price-setting process further causes the processor to automatically notify a seller of the item when a high proxy bid is within a predetermined percentage range of the adjusted reserve price or within a predetermined value range of the reserve price (see at least paragraph 0020).

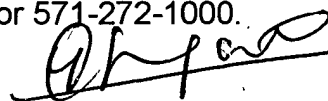
Boarman et al. (US Patent 6,609,112 B1) discloses an Internet proxy-based method and system (see Abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on Increased Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
12/14/2006